

COMPLIANCE BOARD OPINION 92-3

November 9, 1992

Mr. Conrad P. Potemra

The Open Meetings Compliance Board has considered your complaint regarding an alleged violation of the Open Meetings Act by the Planning Commission of Poolesville on August 4, 1992. The Compliance Board finds that no violation of the Open Meetings Act occurred with respect to that meeting.

Your complaint was as follows:

On August 17, 1992 the Poolesville Town Commissioners had a regularly scheduled Town meeting. In response to a question, Commissioner Eddie Kuhlman stated that there was a Planning Commissioners meeting on August 4, 1992. This emergency meeting was announced or referenced at the Poolesville Town Commissioners August 3, 1992, meeting which ended at approximately 9:30 pm. Commissioner Kuhlman stated that an announcement was put on the door. I am not able to verify this. Regular date for Planning Commission Meetings is the third Thursday of the month, with special meetings announced in advance in the local newspaper.

My concern is Planning Commission meetings are the third Thursday of the month unless otherwise announced either in a Poolesville Town Commissioner's meeting or a local "Commissioner Approved Newspaper". This was obviously not the case with the August 4, 1992 meeting. There is NO reasonable way a person would know about a meeting unless they checked the front door of Town Hall EVERY DAY!!!

The response of the Planning Commission indicates that the August 4 meeting was one of its routine "work sessions," at which the Planning Commission engages in activities "such as reviewing drawings prior to their being discussed in public meetings, reviewing building permits, or preparing correspondence which will be acted on in public session No decisions are made in these work sessions, whose purpose is preparation for business meetings." The August 4 meeting involved building permits for proposed residential construction; the Planning Commission "reviewed submissions and identified information that was missing and would need

to be included when the applications were considered at the regularly scheduled ... business meeting." The response of the Planning Commission indicates its view that these activities constitute an "executive function" outside the purview of the Open Meetings Act. The Planning Commission goes on to say, however, that it has voluntarily taken the position "that any interested citizen may attend, and to that end we post notices of any such work sessions on the door to the Town Hall."¹

With certain exceptions, neither the public notice nor any other provision of the Open Meetings Act applies to a public body when it is engaging in an "executive function," defined in pertinent part as "the administration of ... a law of the State ...[or] a law of a political subdivision of the State." See §§10-502(d)(1)(ii) and 10-503(a)(1)(i). The activities described by the Poolesville Planning Commission all appear to involve the administration of both the State law vesting certain authority in the Planning Commission and pertinent local law governing land use in Poolesville. Therefore, these activities fall within the term "executive function" as defined by the Act. They are not "advisory," "legislative," or "quasi-legislative" in character.

The Compliance Board recognizes that "any ... zoning matter" is subject to the Act, even if the matter is an "executive function." §10-503(b)(2).² But Maryland law reflects a well-established distinction between planning and zoning. Compare Article 66B, §3.05 with §§4.01 and 4.03. See Clarke v. County Comm'rs, 270 Md. 343 (1973). Thus, we can only conclude that when the General Assembly used the term "zoning" in §10-503(b)(2), it meant zoning and not planning. To the extent that, as described, the activities of the Poolesville Planning Commission do not deal with zoning and fall within the term "executive function," they are not subject to the Open Meetings Act.³

¹ Notices about the business meetings of the Planning Commission are published in the local newspaper only when the schedule departs from that established by custom.

² Under §10-503(b)(2), the Act applies to a public body "when it is meeting to consider ... a special exception, variance, conditional use, zoning classification, the enforcement of any zoning law or regulation, or any other zoning matter," even if these activities would ordinarily be excluded from the Act's coverage as "executive" or "quasi-judicial" functions. The Act is also applicable, regardless of functional definitions, when a public body is meeting to consider "granting a license or permit." §10-503(b)(1).

³ The Planning Commission goes on to suggest that, even if the Act were applicable to work sessions of this kind, the form of notice that it uses - posting on the door of the Town Hall - is reasonable. The Act describes several methods by which a public body may give the notice that is required under §10-506, including this one: "If the public body previously has given public notice that this method will be used, by posting or depositing (continued...)"

To avoid any misunderstanding, the Compliance Board wishes to make clear that the test for applicability of the Act is not the label given to a meeting. Calling a meeting a "work session" does not matter in the slightest; for purposes of Open Meetings Act compliance, what matters is whether the activities undertaken at the work session are within the scope of the Act. If, as here, they are not, the Act does not apply.

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³ (...continued)

the notice at a convenient public location at or near the place of the session."

The response of the Planning Commission does not indicate whether it had previously given public notice that notices of its work sessions would be posted on the door to the Town Hall. If it has done so, then that method of notice would be authorized by the Act.